

Appl. No. 09/768,417  
Response Dated 09/24/2004  
Reply to Office Action of 06/10/2004

APP 1256

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SEP 24 2004

Appl. No. : 09/768,417  
Applicant : John R. Wullert II  
Filed : 01/24/2001  
Title : Method and Apparatus for Creating a Presence  
Monitoring Contact List with Dynamic Membership  
TC/A.U. : 2642  
Examiner : BUI, BING Q  
  
DocketNo. : APP 1256

Mail Stop Fee Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

### RESPONSE

Sir:

This is in response to the non-final Office Action dated June 10, 2004, in the above identified application. For the reasons set forth below applicant requests the withdrawal of this Office Action and allowance of the application.

Applicant appreciates the courtesy shown to applicant's attorney in the telephone interview of September 20, 2004, and this Response has been prepared in the light of that interview.

A Final Rejection was issued by the Examiner in this application Sept. 24, 2003. In response thereto applicant filed a Notice of Appeal, dated December 24, 2003, and was received in the PTO mailroom December 29, 2003. Following that an Appeal Brief, in triplicate, was submitted March 24, 2004, and received in the PTO mailroom March 26, 2004.

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Applicant has, accordingly, been awaiting the Examiner's Answer to applicant's Brief. Alternatively, the Examiner could withdraw the Final Rejection and either allow the application or issue a new basis for rejection. In fact, the Examiner has done none of these options.

What the Examiner has done is to issue an Office Action, without withdrawing the Final Rejection or removing the application of its status as being on Appeal. Further, the Office Action issued is, verbatim in large part, a repeat of the Final Rejection from which the appeal has been taken. Applicant strongly disagrees with the Examiner's conclusion that claims 1-11 are unpatentable, 35 USC 103(a) in view of Bajzath et al patent 6,114,644 either alone or in view of Bateman et al patent 6,311,231, for the reasons set forth in applicant's Appeal Brief, which brief applicant urges the Examiner to review in lieu of its being repeated in this response.

Accordingly, applicant strenuously objects to the issuance of this non-final rejection and requests that the Examiner either file an Examiner's Answer in the pending Appeal or allow the application.

A petition for a one month extension of time is attached.

Respectfully submitted,

John R. Wullert, II

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